JS 44 (Rev. 08/16) PBT

# CIVIL COVER SHEET

16-cv-6416

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

**I. (a) PLAINTIFFS**
WILLIAM J. FEARNLEY, et al.,

**DEFENDANTS**
THE 3M COMPANY, et al., 16 6416

**(b)** County of Residence of First Listed Plaintiff: Montgomery County
*(EXCEPT IN U.S. PLAINTIFF CASES)*

County of Residence of First Listed Defendant: Ramsey County, MN
*(IN U.S. PLAINTIFF CASES ONLY)*
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*
W.Steven Berman, Napoli Shkolnik PLLC
360 Lexington Avenue, Eleventh Floor
New York, NY 10017

Attorneys *(If Known)*

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

## III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☒ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

## IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☒ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

**PRISONER PETITIONS**

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

**FORFEITURE/PENALTY**
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

## V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332

Brief description of cause:
Action for tort to person and property from resulting from water contamination

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND $

CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

*(See instructions)*: JUDGE Hon. Petrese B. Tucker DOCKET NUMBER 2:16-cv-04961

DATE 12/13/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ [signature]

DEC - 9 2016

**FOR OFFICE USE ONLY**

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print Save As... Reset

JS 44 Reverse (Rev. 08/16)

# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I.(a)** **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b)** **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c)** **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II.** **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

**III.** **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV.** Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

**V.** **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

**VI.** **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII.** **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII.** **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

PBT

## UNITED STATES DISTRICT COURT

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.**

16 6416

Address of Plaintiff: WILLIAM J. FEARNLEY, 140 Robert Ave, Horsham PA 19044

Address of Defendant: 3M Company, 3M Center, St. Paul, MN 55144

Place of Accident, Incident or Transaction: Willow Grove Naval Air Station Joint Reserve Base in Horsham Township, Pennsylvania
*(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☐ No☐

Does this case involve multidistrict litigation possibilities? Yes☐ No☐

*RELATED CASE, IF ANY:*
Case Number: 2:16-cv-4961 Judge Hon. Petrese B. Tucker Date Terminated: ____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes☐ No☑
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes☑ No☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☑
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes☐ No☑

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*
1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) ____

B. *Diversity Jurisdiction Cases:*
1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☑ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) Tort to land

## ARBITRATION CERTIFICATION
*(Check Appropriate Category)*

I, W. Steven Berman, counsel of record do hereby certify:
☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;
☐ Relief other than monetary damages is sought.

DEC - 9 2016

**DATE:** 12/13/2016 [signature] Attorney-at-Law Pa # 45927 Attorney I.D.#

**NOTE:** A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.**

**DATE:** 12/13/2016 [signature] Attorney-at-Law Pa #45927 Attorney I.D.#

CIV. 609 (5/2012)

PBT

# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

## CASE MANAGEMENT TRACK DESIGNATION FORM

| | | |
|---|---|---|
| Fearnley, et al., | : | CIVIL ACTION |
| v. | : | |
| The 3M Company, et al., | : | NO. 16 6416 |

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)

(f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

| | | |
|---|---|---|
| 12/06/2016 | W. Steven Berman | Plaintiffs |
| **Date** | **Attorney-at-law** | **Attorney for** |
| (212) 397-1000 | (646) 843-7603 | wsberman@napolilaw.com |
| **Telephone** | **FAX Number** | **E-Mail Address** |

**(Civ. 660) 10/02**

DEC -9 2016

#400

PBT

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF PENNSYLVANIA**

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WILLIAM J. FEARNLEY, LISA FRYLING, ROMAYNE HIGGINS, PHYLLIS KELLY, ISSAC PEOPLES, KENNETH V. STACEY, DEBORAH L. STACEY, and LEO VARANI, individually and as and on behalf of all others similarly Situated,

Plaintiffs

v.

THE 3M COMPANY (f/k/a Minnesota Mining and Manufacturing, Co), THE ANSUL COMPANY, ANGUS FIRE, NATIONAL FOAM, BUCKEYE FIRE PROTECTION CO., CHEMGAURD,

Defendants

Case No: 16 6416

JURY TRIAL DEMANDED

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**CLASS ACTION COMPLAINT**

Plaintiffs, William J. Fearnley, Lisa Fryling, Romayne Higgins, Phyllis Kelly, Issac Peoples, Kenneth V. Stacey, Deborah L. Stacey, and Leo Varani, by and through their undersigned counsel, hereby file this Class Action Complaint, individually, and on behalf of all others similarly situated, and makes these allegations based on information and belief and/or which are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery against Defendant, THE 3M COMPANY (f/k/a Minnesota Mining and Manufacturing, Co.), Defendant, THE ANSUL COMPANY, Defendant, ANGUS FIRE, Defendant, NATIONAL FOAM, Defendant, BUCKEYE FIRE PROTECTION CO., and Defendant CHEMGAURD, (collectively "Defendants") as follows:

## INTRODUCTION

Plaintiffs, individually and on behalf of those similarly situated, bring this action for negligence, private nuisance, medical monitoring, defective product –failure to warn, defective product-defective design, and unjust enrichment, as a direct and proximate result of exposure to water contaminated with toxic chemicals resulting from Defendants' toxic and defective products, aqueous firefighting foams ("AFFF") and other materials containing perfluorochemicals (PFCs) including perfluorooctanesulfonic acid ("PFOS") and related fluorochemicals that can degrade to perfluorooctanoic acid ("PFOA") or PFOS, which were released onto the ground, into the environment and infiltrated the groundwater and Plaintiffs' drinking/potable water.

## PARTIES

**Plaintiffs**

1. Plaintiff William J. Fearnley is a resident of Horsham, Pennsylvania, residing at 140 Robert Ave, Horsham PA 19044. Mr. Fearnley has owned the property for eighteen years and receives his water from a municipal well owned by the Hosham Water and Sewer Authority, which has been found to have elevated levels of PFOA. Mr. Fearnley's property has suffered a decrease in the value of the home since the disclosure of PFOA contamination in the area.

2. Mr. Fearnley has been exposed to PFOA, has thyroid cancer, and is at an increased risk of several health effects, including but not limited to effects on the liver and immune system, high cholesterol levels, testicular and kidney cancer.

3. Mr. Fearnley has a legitimate fear of developing testicular and kidney cancer and/or other diseases as a result of the PFOA exposure he has sustained.

4. Plaintiff Lisa Fryling is a resident of Warrington Pennsylvania, residing at 2243 Pileggi Road, Warrington, PA 18976. Ms. Fryling has lived in the home for two years and she receives her water from a private well.

5. Ms. Fryling has been exposed to high levels of PFOA and is at an increased risk of several health effects, including but not limited to effects on the liver, thyroid and the immune system, high cholesterol, high blood pressure, and at increased risk for kidney and other cancers.

6. Ms. Fryling has a legitimate fear of developing cancer and/or other diseases as a result of the PFOA exposure she has sustained.

7. Plaintiff Romayne Higgins is a resident of Hatboro Pennsylvania, residing at 215 Diane Ave, Hatboro, PA 19040. Ms. Higgins has lived in the home since 1985 and has owned it since 2009. She receives her water from a municipal well which has been found to have elevated levels of PFOA. Ms. Higgins' property has suffered a decrease in the value of the home since the disclosure of PFOA contamination in the area.

8. Ms. Higgins has been exposed to high levels of PFOA, has thyroid disease, high blood pressure, and is at an increased risk of several health effects, including but not limited to effects on the liver and the immune system, high cholesterol, and kidney and other cancers.

9. Ms. Higgins has a legitimate fear of developing cancer and/or other diseases as a result of the PFOA exposure she has sustained.

10. Plaintiff Phyllis Kelly is resident of Warminster Pennsylvania, residing at 466 Nemoral Street, Warminster PA 18974. Ms. Kelly has owned the property since 1960. She receives her water from a municipal well which has been found to have elevated levels of PFOA. Ms. Kelly's property has suffered a decrease in the value of the home since the disclosure of PFOA contamination in the area.

11. Ms. Kelly has been exposed to high levels of PFOA, high blood pressure and cholesterol, and is at an increased risk of several health effects, including but not limited to effects on the liver and the immune system, changes in thyroid hormone, and kidney and other cancers.

12. Ms. Kelly has a legitimate fear of developing cancer and/or other diseases as a result of the PFOA exposure she has sustained.

13. Plaintiff Isaac Peoples is a resident of Willow Grove, Pennsylvania, residing at 1531 Fairview Ave, Willow Grove, PA 19090. Mr. Peoples has owned the property since 1983 and receives his water from a municipal well which has been found to have elevated levels of PFOA. Mr. Peoples's property has suffered a decrease in the value of the home since the disclosure of PFOA contamination in the area.

14. Mr. Peoples has been exposed to PFOA, and is at an increased risk of several health effects, including but not limited to effects on the liver and immune system, high cholesterol levels, high blood pressure, changes in thyroid hormones, as well as testicular and kidney cancer.

7. Mr. Peoples has a legitimate fear of developing cancer and/or other diseases as a result of the PFOA exposure he has sustained.

15. Plaintiff Kenneth V. Stacey is a resident of Warrington, Pennsylvania, residing at 2406 Fairway Terrace, Warrington, PA 18976. Mr. Stacey has owned the property, along with his wife Deborah, since 1987 and receives his water from a municipal well which has been found to have elevated levels of PFOA. Mr. Stacey's property has suffered a decrease in the value of the home since the disclosure of PFOA contamination in the area.

16. Mr. Stacey has been exposed to PFOA, and is at an increased risk of several health effects, including but not limited to effects on the liver and immune system, high cholesterol levels, high blood pressure, changes in thyroid hormones, as well as testicular and kidney cancer.

17. Mr. Stacey has a legitimate fear of developing cancer and/or other diseases as a result of the PFOA exposure he has sustained.

18. Plaintiff Deborah L. Stacey is a resident of Warrington, Pennsylvania, residing at 2406 Fairway Terrace, Warrington, PA 18976. Mrs. Stacey has owned the property, along with her husband Kenneth, since 1987 and receives her water from a municipal well which has been found to have elevated levels of PFOA. Mrs. Stacey's property has suffered a decrease in the value of the home since the disclosure of PFOA contamination in the area.

8. Mrs. Stacey has been exposed to high levels of PFOA, suffers from peritoneal-ovarian carcinoma, thyroid disease, and high cholesterol and blood pressure, and is at an increased risk of several health other effects, including but not limited to effects on the liver and the immune system, high cholesterol, and kidney and other cancers.

19. Mrs. Stacey has a legitimate fear of developing cancer and/or other diseases as a result of the PFOA exposure she has sustained.

20. Plaintiff Leo Verani is a resident of Chalfont, Pennsylvania, residing at 212 Prince William Way, Chalfont, PA 18914. Mr. Verani has owned the property, along with his wife Charlotte, who passed away in 2011, since 1966. He receives his water from a municipal well which has been found to have elevated levels of PFOA. Mr. Verani's property has suffered a decrease in the value of the home since the disclosure of PFOA contamination in the area.

21. Mr. Verani has been exposed to PFOA, suffers with thyroid disease, high cholesterol and blood pressure, and is at an increased risk of several health effects, including but not limited to effects on the liver and immune system, as well as testicular and kidney cancer.

22. Mr. Verani has a legitimate fear of developing cancer and/or other diseases as a result of the PFOA exposure he has sustained.

**Defendants**

23. When reference is made in this Complaint to any act or omission of any of the Defendants, it shall be deemed that the officers, directors, agents, employees or representatives of the Defendants committed or authorized such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of Defendants, and did so while acting within the scope of their duties, employment or agency.

24. The term "Defendant" or "Defendants" refers to all Defendants named herein jointly and severally.

25. Upon information and belief, each of the Defendants are responsible, negligently, intentionally and/or in some actionable manner, for the events and happenings referred to herein, and caused and continue to cause injuries and damages legally thereby to Plaintiffs, as alleged, either through each Defendant's own conduct or through the conduct of their agents, servants or employees, or due to the ownership, maintenance or control of the instrumentality causing them injury, or in some other actionable manner.

26. Defendant 3M Company ("3M") is, upon information and belief, a Delaware corporation and does business throughout the United States, including conducting business in Pennsylvania. 3M is an American multinational corporation based in Maplewood, Minnesota,

and was founded in 1902 as the Minnesota Mining and Manufacturing Company. With approximately $30 billion in annual net sales, 3M employs approximately 90,000 people, operates in approximately 70 countries, people and produces more than 55,000 products.

27. Defendant 3M sold Aqueous Film Forming Foam (AFFF) used to fight fires at numerous military bases, airports, and other locations throughout the country, including Pennsylvania, is engaged in substantial and not isolated activity in this state, all as more fully alleged herein, and is subject to the jurisdiction of this Court pursuant to C.R.S. 13-1-124.

28. Defendant The Ansul Company (hereinafter "Ansul ") is a Wisconsin corporation, having a principal place of business at One Stanton Street, Marinette, Wisconsin 54143. At all times relevant, Ansul manufactured fire suppression products, including AFFF that contained fluorocarbon surfactants containing PFCs.

29. National Foam, Inc. (a/k/a Chubb National Foam) (National Foam, Inc. and Chubb National Foam are collectively referred to as "National Foam") is a Pennsylvania corporation, having a principal place of business at 350 East Union Street, West Chester, Pennsylvania 19382. At all times relevant, National Foam manufactured fire suppression products, including AFFF that contained fluorocarbon surfactants containing PFCs.

30. Defendant Angus Fire is part of Angus International with its corporate headquarters in Bentham in the United Kingdom. Angus Fire has a place of business located in the United States at 141 Junny Road, Angier, NC 27501.

31. At all times relevant to the present litigation Angus Fire was engaged in the manufacture, marketing, and sale of AFFF that contained PFOA, PFOS, and other toxic substances.

32. Defendant Buckeye Fire Equipment Company is a North Carolina corporation with its principal place of business at 110 Kings Road, Mountain, NC 28086.

33. At all times relevant to the present litigation Buckeye Fire Equipment Company was engaged in the manufacture, marketing, and sale of AFFF that contained PFOA, PFOS, and other toxic substances.

34. Defendant Chemguard is a Wisconsin corporation having its principal place of business at One Stanton Street, Marinette, WI 54143.At all times relevant to the present litigation Chemguard was engaged in the manufacture, marketing, and sale of AFFF that contained PFOA, PFOS, and other toxic substances.

## JURISDICTION AND VENUE

35. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (d)(1) and (d)(2) in that this action seeks monetary relief in excess of $5,000,000, exclusive of interest, costs and attorney's fees and is between citizens of different States.

36. Venue is appropriate in this judicial circuit pursuant to 28 U.S.C. § 1391 because a substantial part of the events, acts or omissions giving rise to the claims occurred in the Eastern District of Pennsylvania.

## FACTUAL ALLEGATIONS AS TO ALL COUNTS

### PFOA Background

37. Perfluorooctanoic acid (PFOA, also known as C8 or perfluorooctanoate) is a man-made, manufactured chemical not found in nature that belongs to a group of fluorine-containing chemicals called perfluorinated chemicals (PFCs). These chemicals were and are used to make household and commercial products that resist heat and chemical reactions, and repel oil, stains, grease, and water as well as other uses.

38. In 1947, the Minnesota Mining and Manufacturing Company (3M) began producing PFOA via electrochemical fluorination.

39. PFOA was once widely used in nonstick cookware, in surface coatings for stain-resistant carpets and fabric, and in paper and cardboard food packaging (such as microwave popcorn bags and fast food containers). PFOA was also used in fire-fighting foam and in many products for the aerospace, automotive, building/construction, and electronics industries.

35. Over the years, a number of companies, including but not limited to, Arkema, Asahi, BASF, Clariant, Daikin, DuPont, and Solvay Selexis have manufactured PFOA within the United States.

36. PFOA is a fluorine-containing chemical that is primarily used in the production of fluoropolymers such as poly-tetra-fluoro-ethylene ("PTFE").

40. PFOA is readily absorbed after consumption or inhalation, and it accumulates primarily in the blood stream, kidney and liver.

41. In 2006, eight major PFOA manufacturers agreed to participate in the U.S. Environmental Protection Agency's ("EPA") PFOA Stewardship Program. The participating companies made voluntary commitments to reduce product content and facility emissions of PFOA and related chemicals by 95%, no later than 2010.

42. Further, PFOA / C8 has been studied extensively by, among others, a Science Panel that was formed out of a class action settlement from a lawsuit arising from contamination from DuPont's Washington Works located in Wood County West Virginia. This panel consisted of three epidemiologists who were specifically tasked with determining whether there was a probably link between C8 and human diseases. The panel found probable links between PFOA

and kidney cancer, testicular cancer, ulcerative colitis, thyroid disease, pregnancy induced hypertension (including preeclampsia), and hypercholesterolemia.

43. In the May 2015 "Madrid Statement on Poly- and Perfluoroalkyl Substances (PFASs)[1]" scientists and other professionals from a variety of disciplines, concerned about the production and release into the environment of PFOAs, called for greater regulation, restrictions, limits on the manufacture and handling of any PFOA containing product, and for development of safe non-fluorinated alternatives to these products to avoid long-term harm to human health and the environment.

44. As of May 2016, the EPA has issued Lifetime Health Advisories and Health Effects Support Documents for PFOA and PFOS[2]. The EPA identifies the concentration of PFOA or PFOS in drinking water at or below which health effects are not anticipated to occur over a lifetime of exposure at 70 parts per trillion (ppt). While health advisories are non-regulatory, they reflect the EPA's assessment of the best available peer-reviewed science.

45. PFOA gets into the environment from industrial facilities that make PFOA or use PFOA to make other products. It also enters the environment when released from PFOA-containing consumer and commercial products during their use and disposal.

46. PFOA can remain in the environment, particularly in water, for many years and can move through soil and into groundwater, or be carried in air.

47. Increasingly human studies show associations between increased PFOA levels in blood and an increased risk of several health effects, including high cholesterol levels, changes in

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[1] Blum A, Balan SA, Scheringer M, Trier X, Goldenman G, Cousins IT, Diamond M, Fletcher T, Higgins C, Lindeman AE, Peaslee G, de Voogt P, Wang Z, Weber R. 2015. The Madrid statement on poly- and perfluoroalkyl substances (PFASs). Environ Health Perspect 123:A107–A111; http://dx.doi.org/10.1289/ehp.1509934

[2] Lifetime Health Advisories and Health Effects Support Documents for Perfluorooctanoic Acid and Perfluorooctane Sulfonate, 81 Fed. Reg. 101 (May 25, 2016)

thyroid hormone, ulcerative colitis (autoimmune disease), pre-eclampsia (a complication of pregnancy that includes high blood pressure), and kidney and testicular cancer.

48. These injuries can arise months or years after exposure to PFOA.

49. PFOA's extreme persistence in the environment and its toxicity, mobility and bioaccumulation potential, pose potential adverse effects to human health and the environment.

**AFFF Background**

50. Aqueous film forming foam (AFFF) is a Class-B firefighting foam. It is water based and used to extinguish fires that are difficult to fight, particularly those that involve petroleum or other flammable liquids.

51. AFFF was introduced commercially in the mid-1960s and rapidly became the primary fire fighting foam in the U.S. and many parts of the world. AFFF provided superior performance over normal Protein foam, which had been in wide spread use since World War II.

52. AFFF's are synthetically formed by combining fluorine free hydrocarbon foaming agents with highly fluorinated surfactants. When mixed with water, the resulting solution has the characteristics needed to produce an aqueous film that spreads across the surface of a hydrocarbon fuel. It is this film formation feature that provides fire extinguishment and is the source of the designation, aqueous film forming foam.

**Defendants Manufacture and Use of Aqueous Film Forming Foam ("AFFF")**

53. The Defendants manufactured AFFF that contained fluorochemical surfactants, believed to include PFOS, PFOA, and/or certain other PFCs that degrade into PFOS or PFOA. As the manufacturers of AFFF, the Defendants knew or should have known that the inclusion of PFCs in AFFF presented an unreasonable risk to human health and the environment. Defendants also knew or should have known that PFCS are highly soluble in water, highly mobile, extremely

persistent in the environment, and highly likely to contaminate water supplies if released to the environment.

54. The Defendants marketed and sold their products with knowledge that large quantities of toxic, PFCs containing AFFF would be used in training exercises and in emergency situations at military bases and airports, including the Bases, in such a manner that dangerous chemicals would be released into the environment.

55. The Defendants marketed and sold their products with knowledge that large quantities of toxic, PFCs containing AFFF would be stored in fire suppressant systems and tanks on Air Force Bases and at airports and that such systems and storage were used and maintained in such a manner that dangerous chemicals would be released into the environment.

56. Fluorosurfactants used in 3M's AFFF were produced by a unique process known as electrochemical fluorination (ECF). The ECF process results in a product that contains and/or breaks down into compounds containing PFOA and/or PFOS.

57. In the foam industry, concentrates are typically referred to as "3%" or "6%" concentrate, depending on the mixture rate with water. AFFF concentrates contain about 60-90% water and have a fluorine content of about 0.3-1.8%.

58. AFFF procured in the U.S. was specified to conform to either a foam standard of Underwriters Laboratory (UL) or a more stringent military specification ("MilSpec"). MilSpec AFFFs contain more fluorosurfactant and more fluorine than UL agents.

59. AFFFs are used by the U.S. military, oil refineries and other, petrochemical industries, civil aviation and fire departments throughout the country.

60. The Air Force began using PFC-based AFFF in 1970 to extinguish fuel-based fires.

**AFFF Usage at the Bases**

61. Upon information and belief, 3M, Ansul and National Foam each manufactured AFFF containing PFCs, among other reasons, for sale to the Department of Defense, and Defendants sold AFFF that was used at the Bases.

62. It estimated that 75% of the military AFFF inventory is ECF-based product. This is not surprising since for most of the past 30 years 3M was the primary supplier of AFFF to the DOD [Department of Defense] stock system.[3]

63. The military Qualified Products Database listed 3M AFFF products as early as 1970, National Foam products by 1973, and Ansul products as early as 1976.[4]

64. According to a 2011 Department of Defense risk alert document, "through 2001, the DoD purchased AFFF from 3M and/or Ansul, Inc. 3M supplied PFOS-based AFFF under the product name, 3M Light Water AFFF."[5]

65. At any given time during its operation, the Bases housed and used thousands of gallons of AFFF concentrate manufactured by Defendants. The AFFF was expected to reach Bases without substantial change in the condition in which it was sold to the Air Force, and it did.

66. Upon information and belief, the AFFF concentrate manufactured by Defendants was stored in buckets, drums, tankers, tanks and sprinkler systems at the Bases.

67. U.S. Navy, Air National Guard, Marines, and Air Force (collectively referred to as the "Military") personnel, as well as civilian firefighters conducted training exercises at the Bases for decades using AFFF manufactured by Defendants.

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[3] Fire Fighting Foam Coalition, "Estimated Quantities Of Aqueous Film Forming Foam in the United States", August, 2004.
[4] http://dcppe.org/Systems/AFFF/MIL-F-24385%20QPL%20History%20for%20Type%206%20AFFF.pdf
[5] DoD Risk Alert #03-11, "Aqueous Film Forming Foam", http://www.denix.osd.mil/cmrmp/ecmr/ecprogrambasics/resources/chemical-material-emerging-risk-alert-for-afff/

68. As part of the training exercises, Military and civilian firefighters use of AFFF included but was not limited to: extinguishing fires and explosions on the ground and runways, spraying runways in anticipation of a landing which may result in a crash and other simulation or training, all of which led to the ground, runways, and adjacent soil being covered with AFFF and the byproducts of AFFF from runoff.

69. Each site also possessed and maintained aircraft hangars protected by ceiling units holdings hundreds of gallons of AFFF.

70. Upon information and belief, discharges occasionally occurred with the aircraft hangars resulting in the discharge of hundreds of gallons of AFFF. The personnel at the Bases cleaned the hangars by washing the foam down drains.

71. Upon information and belief, instructions and warning labels and material safety data sheets that were provided with the AFFF by the Defendants, which, at least at significant times, did not fully describe the health and environmental hazards of AFFF which Defendants knew or should have known.

72. Upon information and belief, Defendants knew of these health and environmental hazards for years. For example, by the mid-1980s, 3M began a major program to review personnel handling of fluorochemicals and determined that fluorochemicals could bioaccumulate.

73. 3M, who was the predominant manufacturer of AFFF, ceased production of PFOS-based AFFF in 2002. Under pressure from the EPA, on May 16, 2000, 3M announced it would phase out production of two synthetic chemicals, PFOS and PFOA, that it had developed more than fifty years earlier.[6]

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[6] 3M press release, "3M Phasing Out Some Of Its Specialty Materials", May 16, 2000, http://www.chemicalindustryarchives.org/dirtysecrets/scotchgard/pdfs/226-0641.pdf#page=1

74. An EPA internal memo on the day of 3M's phase out announcement stated: "3M data supplied to EPA indicated that these chemicals are very persistent in the environment, have a strong tendency to accumulate in human and animal tissues and could potentially pose a risk to human health and the environment over the long term...[PFOS] appears to combine Persistence, Bioaccumulation, and Toxicity properties to an extraordinary degree."[7]

75. In contrast, 3M's news release insisted that "our products are safe" while extolling their "principles of responsible environmental management" as driving the cessation of production.[8]

76. Even though 3M, who was the predominant manufacturer of PFOS-based AFFF, ceased production of PFOS-based AFFF in 2002, neither 3M nor any other Defendant that used a Toxic Surfactant recalled its dangerous products.

77. Upon information and belief, at no time prior to May 2000 did the Defendants warn the users of the AFFF of the health risks associated with use, disposal and bioaccumulation of AFFF components.

78. Upon information and belief, at no time during the relevant period did the Defendants warn users of the AFFF that ingredients in the AFFF were persistent, bioaccumulative and toxic, or that, once introduced into the environment, its chemical components would readily mix with ground and surface water and migrate off the Bases, contaminants the surrounding communities.

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[7] EPA internal memo, "Phaseout of PFOS", May 16, 2000.http://www.chemicalindustryarchives.org/dirtysecrets/scotchgard/pdfs/226-0629.pdf#page=2

[8] 3M press release, "3M Phasing Out Some Of Its Specialty Materials", May 16, 2000, http://www.chemicalindustryarchives.org/dirtysecrets/scotchgard/pdfs/226-0641.pdf#page=1

79. Upon information and belief, Military personnel and civilians at the Willow Grove Base continued to use AFFF containing PFCs for trainings and emergencies until the base closed in 2011.

80. Beginning in 2009, the USAF followed the EPA issued short-term provisional health advisory of 400 ppt for PFA and 200 ppt of PFOS. The USAF now applies the current EPA lifetime exposure health advisory of 70 ppt for both PFOA and PFOS.[9]

**Local PFOA and PFOS Contamination**

81. In 2014, the Horsham Water and Sewer Authority tested its municipal wells in accordance with EPA's Third Unregulated Contaminant Monitoring Rule ("UCMR3"). The testing showed that two of its wells were contaminated with PFOS above the PHA, then at 200 ppt. The Horsham Water and Sewer Authority immediately shut off those wells.

82. Subsequently, the Horsham Water and Sewer Authority re-tested all of its active wells using a more sensitive test. When the Horsham Water and Sewer Authority re-tested its wells, each of its wells showed contamination from PFOS and/or PFOA. Horsham eventually shut down five of its wells due to PFOS and/or PFOA contamination.

83. Between November 2013 and June 2014, the Warminster Municipal Authority also tested its wells in compliance with UCMR3. The testing showed PFOS levels of 40 ppt to 1090 ppt and PFOA levels of 20 ppt to 890 ppt. The Warminster Municipal Authority closed six of tis wells due to PFOS and/or PFOA contamination.

84. Warrington Township also participated in UCMR3 during 2014 and 2015. The testing showed PFOS levels as high as 1600 ppt and PFOA levels up to 270 ppt. Warrington Township initially closed three of its wells, and eventually closed five of its wells due to PFOS and/or PFOA contamination.

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[9] *Air Force applies new EPA guidance*, Air Force Civil Engineer Center Public Affairs, May 19, 2016.

85. The widespread discovery of contaminated municipal drinking water wells led the EPA to call for testing of private drinking water wells within the area.

86. Since the summer of 2014, the EPA has tested scores of wells in the vicinity of the Bases. The EPA began reporting the results of the tests during the fall of 2014, at which point the PHA remained at 200 ppt for PFOS and 400 ppt for PFOA. Even at that time, several private wells tested above the PHAs.

87. In May 2016, the EPA revised its PHAs when it issued "final" Health Advisories for PFOS and PFOA.

88. As a result of the EPA's issuing its final Health Advisories for PFOS and PFOA, numerous residents, including those with private wells, learned that their water was contaminated with dangerous levels of PFOS and/or PFOA.

89. As set forth herein, Defendants knowingly manufactured, sold, and distributed a dangerous and defective product, failed to provide proper warnings to protect bystanders, such as the Plaintiffs, and failed to recall their products when they took them off the market.

90. The high concentration levels of PFOS and PFOA found in the water near the Bases has been determined to be from the use of AFFF and, therefore, is directly linked to Defendants' manufacture of AFFF.

**The PFOA Contamination –Willow Grove and Warminster Bases**

91. The Pennsylvania communities of Horsham, Warrington, and Warminster are all located north of Philadelphia, Pennsylvania.

92. They are nearby and downgradient of the Willow Grove Naval Air Station Joint Reserve Base in Horsham Township, Pennsylvania (the "Willow Grove Base"), and the former

Naval Air Warfare Center in Warminster Township, Pennsylvania (the "Warminster Base") (collectively the "Bases").

93. Airports as well as bases operated by the U.S. Air Force and other branches of the military have used aqueous firefighting foams ("AFFF") and other materials containing perfluorooctanesulfonic acid ("PFOS") and related fluorochemicals that can degrade to perfluorooctanoic acid ("PFOA") or PFOS.

94. These sites have been linked to the contamination of surface and groundwater with PFOA, PFOS and other perfluorinated chemicals ("PFCs") throughout the country.

95. PFOA and PFOS that originated and were released from the Bases have contaminated the water supply relied upon by Plaintiffs and the putative classes.

96. PFOA has been detected in levels exceeding the current EPA Health Advisory Limit of 70 parts per trillion (ppt) in the water supply that provides water to these communities through both municipal water systems and private wells.

**Plaintiffs Exposure and Damages**

97. Plaintiffs have suffered both personal injury and property damage as a result of the PFOA and PFOS contamination of their water supplies by AFFF that has entered the water supply relied upon by Plaintiffs and the putative classes.

98. The Plaintiffs and the putative classes, as residents in the communities located adjacent to the Bases, have been exposed for many years to PFCs including at concentrations hazardous to their health.

99. The properties of the Plaintiffs and the putative classes have been damaged as a result of the presence of PFCs present in the groundwater and drinking water in both private and municipal wells.

100. Plaintiffs seek recovery from Defendants for injuries, damages and losses suffered by the Plaintiffs, each of whom suffered injuries as a result of exposure to the introduction of PFOA, PFOS and other toxic substances into the drinking water supply of Plaintiffs and the putative classes, in an amount to be determined at trial, exclusive of interest, costs, and attorneys' fees.

## CLASS ACTION ALLEGATIONS

101. Plaintiffs incorporate all the forgoing paragraphs as though the same were set forth at length herein.

102. Plaintiffs bring this action as a class action on their own behalf and on behalf of all other persons similarly situated as members of the proposed subclasses and seek to certify and maintain it as a class action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure, subject to amendment and additional discovery as follows:

a. The Municipal Water Bodily Injury Class: all residents who have consumed water from a municipal water supply, including Horsham Water and Sewer Authority, Warminster Municipal Authority, and Warrington Township Water and Sewer Department;

b. The Private Well Bodily Injury Class: all residents who have consumed water from water supplied from private wells within the areas represented on the map attached hereto as Exhibit A;

c. The Property Damage Class: all owners of real property who have obtained their drinking water from either Horsham Water and Sewer Authority, Warminster Municipal Water Authority, Warrington Township Water and Sewer Department, or from a private well (the "Property Damage Class").

103. Plaintiffs are members of both the proposed Bodily Injury and Property Damage Classes they seek to represent. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

104. Excluded from the Class are:

a. Defendants, including any entity or division in which Defendants have a controlling interest, along with their legal representative, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates;

b. the Judge to whom this case is assigned, the Judge's staff, and the Judge's immediate family;

c. any class counsel or their immediate family members; and

d. all governmental entities.

105. Plaintiffs reserve the right to amend the Class definition if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses, or modified in any other way.

**Numerosity and Ascertainability**

106. This action meets the numerosity requirement of Fed. R. Civ. P. 23(a)(1), given that the number of impacted residents in the areas surrounding the Bases and property owners, upon information and belief, has reached the thousands, making individual joinder of class members' respective claims impracticable. While the exact number of class members is not yet known, a precise number can be ascertained from U.S. Federal Census records, the Commonwealth of Pennsylvania, and the public records of the municipal entities in the areas surrounding the Bases, and through other appropriate discovery. The resolution of the claims of the class members in a single action will provide substantial benefits to all parties and the Court. It is expected that the class members will number in the thousands.

107. Finally, Class members can be notified of the pendency of this action by Court-approved notice methods.

**Typicality**

108. Pursuant to Federal Rules of Civil Procedure 23(a)(3), Plaintiffs' claims are typical of the claims of class members, and arise from the same course of conduct by Defendants. Plaintiffs' persons and real property, like all Class Members, have been damaged by Defendants' misconduct in that they have incurred damages and losses related to the introduction of PFOA,

PFOS, and other toxic substances into the municipal water supplies operated in the areas surrounding the Bases as well as private wells in the area, causing personal injury and property damages.

109. Furthermore, the factual bases of Defendants' actions and misconduct are common to all Class Members and represent a common thread of misconduct resulting in common injury to all Class Members. The relief Plaintiffs seek is typical of the relief sought for absent Class Members.

**Adequacy of Representation**

110. Plaintiffs will serve as fair and adequate class representatives as their interests, as well as the interests of their counsel, do not conflict with the interest of other members of the class they seek to represent. Further, Plaintiffs have retained counsel competent and well experienced in class action litigation and environmental tort litigation.

111. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so. Neither the Plaintiffs nor their counsel have interests adverse to the Class.

**Predominance of Common Issues**

112. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, making it appropriate to bring this action under Rule 23(b)(3). The answers to these common questions will advance resolution of the litigation as to all Class Members. These common legal and factual issues include the following:

a) Whether Defendants engaged in the conduct alleged herein;

b) Whether Defendants knew or should have known that exposure to PFOA and PFOS could increase health risks; Whether Defendants knew or should have known that their manufacture of AFFF containing PFOA and PFOS was unreasonably dangerous;

c) Whether Defendants knew or should have known that their AFFF contained persistent, stable and mobile chemicals that were likely to contaminate groundwater water supplies;

d) Whether Defendants failed to sufficiently warn users of the potential for harm that resulted from use of their products;

e) Whether Defendants became aware of health and environmental harm caused by PFOA and PFOS in their AFFF products and failed to warn users and Plaintiffs and the Class of same;

f) The extent to which Defendants knew about the PFOA and PFOS contamination in and around the Bases;

g) The extent to which Defendants knew about the PFOA and PFOS contamination in the water supply systems operated by the municipal entities in and around the Bases;

h) The extent to which Defendants knew about the PFOA and PFOS contamination in the water supplied to private wells of residents of the areas surrounding the Bases;

i) Whether the Defendants owed a duty to the Plaintiffs and the Class to refrain from the actions that caused the contamination of the drinking water with PFOA and PFOS;

j) Whether Defendants made unlawful and misleading representations or material omissions with respect to the health impacts of PFOA and PFOS;

k) For the Bodily Injury Classes, whether any health issue or bodily injury of Plaintiffs and the Class are attributable to exposure of PFOA and PFOS in the water supply;

l) For the Property Damage Classes, whether the PFOA and contamination caused and continues to cause:

(1) a continuous invasion of the property rights of the Plaintiffs and Class such that the property values in the areas surrounding the Bases have and/or continue to decline in value following the disclosure of the PFOA contamination,

(2) have substantially interfered with Plaintiffs' and the Class' use and enjoyment of their property.

m) Whether Plaintiffs and Class Members are entitled to damages and other monetary relief and other equitable relief, including but not limited to punitive damages, and if so, in what amount.

n) Whether the members of the Classes have sustained damages and the proper measure of damages.

o) Whether Defendants are strictly liable to Plaintiffs and the Class for their actions; and

p) Whether Defendants were unjustly enriched by their actions at the expense of Plaintiffs and the classes.

**Superiority**

113. The class action mechanism is superior to any other available means of the fair and efficient adjudication of this case. Further, no unusual difficulties are likely to be encountered in the management of this class action. Given the great number of residents impacted by Defendants' conduct, it is impracticable for Plaintiffs and the Class to individually litigate their respective claims for Defendants' complained of conduct as to do so would risk inconsistent or contradictory judgments and increase delays and expense to both parties and the

court system. Therefore, the class action mechanism presents considerably less management challenges and provides the efficiency of a single adjudication and comprehensive oversight by a single court.

## CAUSES OF ACTION

### AS AND FOR A FIRST CAUSE OF ACTION:

### Negligence

114. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

115. This cause of action is brought pursuant to Pennsylvania law.

116. Defendants knew or should have known that exposure to PFOA and PFOS was hazardous to the environment and to human health.

117. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF, containing PFCs, was hazardous to human health and the environment.

118. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF containing PFCs would result in the contamination of the water supply in and around the Bases.

119. Knowing of the dangerous and hazardous properties of the AFFF, Defendants had the duty to warn of the hazards associated with AFFF entering and poisoning the environment and groundwater.

120. Defendants knew or should have known that safety precautions would be required to prevent the release of PFOA and PFOS into the surrounding environment.

121. Defendants, as manufacturers, marketers, and sellers of AFFF owed Plaintiffs and the Class a cognizable duty to exercise reasonable care to ensure that AFFF was manufactured, marketed, and sold in such a way as to ensure that the end users of AFFF were are of the potential harm PFOA and PFOS can cause to human health and the environment.

122. Upon learning of the release of the contaminants, Defendants owed Plaintiffs and the Class a duty to warn and notify Plaintiffs and the classes of the release of the contamination before it injured Plaintiffs and the Class and their property and/or to act reasonably to minimize the damage to Plaintiffs and their property.

123. Defendants breached their duty by allowing PFOS and PFOA to be released into the drinking water (both the municipal and private wells) of the areas surrounding the Bases through their failure to warn and notify the end users of AFFF about the danger that PFOS and PFOA would enter into the environment and groundwater.

124. As such, the Defendants, negligently, gross negligently, recklessly, willfully, wantonly, and/or intentionally breached their legal duties to the Plaintiffs and the class, causing the contamination of drinking water in and around the residences of Plaintiffs and the Class.

125. Defendants further breached the duties owed to the Plaintiffs and the Class by failing to take reasonable, adequate, and sufficient steps or actions to eliminate, correct, or remedy any contamination after it occurred.

126. Defendants' failure to notify the Plaintiffs and the Class in a timely manner of the contamination of drinking water of the areas surrounding the Bases, and, consequently, the presence of PFOA and PFOS in the real properties of Plaintiffs constitutes another breach of the duties that Defendants owed the Plaintiffs and the Class.

127. Defendants' breaches of their duties were direct and proximate causes of Plaintiffs' and the Class' damages and the imminent, substantial, and impending harm to their homes and health.

128. Defendants breaches of their duties caused the drinking water in both the municipal and private wells to become contaminated with unsafe and dangerous levels of PFOA and PFOS.

129. Further, Defendants' breach of their duty to timely notify the community and act reasonably in warning of the presence of PFOA and PFOS in AFFF, Plaintiffs and the Class were forestalled from undertaking effective and immediate remedial measures, and Plaintiffs and the Class have expended and/or will be forced to expend significant resources to test, monitor, and remediate the effects of Defendants' negligence for many years into the future.

130. Plaintiffs and the Class suffered foreseeable injuries and damages as a proximate result of said Defendants' negligent breach of their duties as set forth above. At the time Defendants breached their duties to Plaintiffs and the Class, Defendants' acts and/or failures to act posed recognizable and foreseeable possibilities of danger to Plaintiffs and the Class so apparent as to entitle them to be protected against such actions or inactions.

131. Accordingly, Plaintiffs and the Classes seek damages from Defendants, in an amount to be determined at trial, directly resulting from their injuries to their persons and property, in a sufficient amount to compensate them for the injuries and losses sustained and to restore Plaintiffs and the Class to their original position, including but not limited to the difference between the current value of their properties and such value if the harm had not been done, the cost of repair or restoration, the value of the use of the continuous trespass, injuries to persons, including the need for medical monitoring as an element of damages, and actual,

consequential, and nominal damages, flowing from the negligence which are the natural and proximate result of Defendants conduct in an amount to be proved at trial.

**AS AND FOR A SECOND CAUSE OF ACTION**

**Private Nuisance**

132. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

133. This cause of action is brought pursuant to the laws of Pennsylvania.

134. Plaintiffs and the Property Damage Class, as described above, are owners of real property with the right of possession.

135. In a private nuisance claim, it must be established that the alleged conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either (a) intentional and unreasonable, or (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities. *Kembel v. Schlegel*, 478 A.2d 11 (1984)

136. At all times relevant to the present cause of action, Defendants manufactured, marketed, and sold the AFFF that was used at the Bases that resulted in the contamination of the water supply relied upon by Plaintiffs and Property Damage Class at all relevant times.

137. At the time the above-described, affirmative, voluntary, intentional, and unreasonable acts were performed by Defendants, Defendants had good reason to know or expect that large quantities of PFOA and PFOS would and/or could be introduced into the properties of Plaintiffs and the Property Damage Class.

138. The above- affirmative, voluntary, intentional, and unreasonable acts were performed with the reckless disregard of the potential for PFOA and PFOS to be disbursed through the water and onto the land and property of Plaintiffs and the Property Damage Class.

139. Defendants' negligent, reckless, willful, and/or wanton actions and/or intentional failures to act caused an unknown quantity of PFOA, PFOS and possibly other toxic substances to be released into the drinking water relied upon by Plaintiffs and the punitive classes.

140. The introduction of unknown quantities of PFOA, PFOS and other toxic substances onto the property of the Plaintiffs and Property Damage Class unreasonably interfered with the use and enjoyment of their property.

141. The potential danger from the drinking water at their residences has caused the Plaintiffs and the Class significant inconvenience and expense.

142. This constitutes a substantial interference with the use of the properties such that it is offensive and has caused significant inconvenience or annoyance.

143. By reason of the foregoing, Defendants are liable to Plaintiffs and the Class for the damages that they have suffered as a result of Defendants' actions, the amount of which will be determined at trial, plus reasonable attorneys' fees and costs.

**AS AND FOR A THIRD CAUSE OF ACTION**

**Medical Monitoring**

144. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

145. This cause of action is brought pursuant to Pennsylvania law.

146. Defendants knew or should have known that exposure to PFOA and PFOS was hazardous to the environment and to human health.

147. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF, containing PFCs, was hazardous to human health and the environment.

148. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF containing PFCs would result in the contamination of the water supply relied upon by Plaintiffs and the putative classes.

149. A claim for medical monitoring requires (1) exposure greater than normal background levels; (2) to a proven hazardous substance; (3) caused by the defendant's negligence; (4) as a proximate result of the exposure, plaintiff has a significantly increased risk of contracting a serious latent disease; (5) a monitoring procedure exists that makes the early detection of the disease possible; (6) the prescribed monitoring regime is different from that normally recommended in the absence of the exposure; and (7) the prescribed monitoring regime is reasonably necessary according to contemporary scientific principles. *Redland Soccer Club v Dep't of the Army*, 696 A.2d. 137 (1997).

150. The Plaintiffs and Bodily Injury Classes have been exposed to PFOA, PFOS, and potentially other toxic substances that resulted from the use and storage of the Defendants' AFFF at the Bases.

151. Defendants' acts were willful, wanton or reckless and conducted with a reckless indifference to the rights of Plaintiffs and the putative classes.

152. As described more fully above in this Complaint, PFOA and PFOS exposure seriously increase the risk of contracting numerous diseases.

153. The significantly increased risks associated with exposure to PFOA, make periodic diagnostic medical examinations reasonable and necessary.

154. A thorough medical monitoring plan can and should be developed for the Plaintiffs and Bodily Injury Classes that will assist in the early detection and beneficial treatment of the numerous diseases that can develop as a result of exposure to PFOA and PFOS.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**Defective Product, Failure to Warn**

155. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

156. This cause of action is brought pursuant to Pennsylvania law.

157. Defendants knew or should have known that exposure to PFOA and PFOS was hazardous to the environment and to human health.

158. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF, containing PFCs, was hazardous to human health and the environment.

159. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF containing PFCs would result in the contamination of the water supply relied upon by Plaintiffs and the putative classes.

160. Knowing of the dangerous and hazardous properties of the AFFF, Defendants had the duty to warn of the hazards associated with AFFF entering and poisoning the environment and groundwater.

161. Defendants failed to provide sufficient warning to the end users of AFFF, including the Bases, that the use and storage of Defendants' product would cause the product to be released into the environment and cause the contamination of the environment, groundwater, and drinking water, with PFOA, PFOS, and potentially other toxic substances.

162. Further, this contamination then led to the exposure of residents of the areas surrounding the Bases to the toxins and increased their risk of numerous diseases as more fully set forth above.

163. Adequate instructions and warnings on the AFFF products could have reduced or avoided these foreseeable risks of harm to both the residents of the areas surrounding the Bases and their property.

164. Had Defendants provided adequate warnings, the residents of the areas surrounding the Bases could have taken measures to avoid or lessen their exposure.

165. Had Defendants provided adequate warnings, the users of AFFF at the Bases could have taken steps to reduce or prevent the release of PFOA, PFOS, and potentially other toxic substances into the environment, groundwater, and drinking water.

166. Defendants' failure to warn was a direct and proximate cause of the environmental and health impacts from PFOA, PFOS, and potentially other toxic substances, that came from the use and storage of AFFF at the Bases.

167. As such, Defendant's failure to provide adequate and sufficient warnings for the AFFF that they manufactured, marketed, and sold renders the AFFF a defective product.

168. As a result of Defendants' conduct and the resulting contamination, the value and marketability of the property of the Plaintiffs' and Property Damage Class has been and will continue to be diminished. Plaintiffs and the Class Members have suffered the need for and the cost of remediation of their properties and or mitigation systems for those properties, and the cost of alterative water. As a result of the contamination Plaintiffs and the Plaintiff Class have lost use and enjoyment of their properties and have suffered annoyance and discomfort,

inconvenience and annoyance as a consequence of the contamination of their properties by Defendants.

169. As a result of Defendants' conduct and the resulting contamination, the Plaintiffs and the Bodily Injury Classes have been injured in that their exposure to PFOS, PFOA, and potentially other toxic substances has caused them to develop illnesses associated with this exposure as more fully described and/or significantly increased their risk of developing those illnesses.

170. As a result of Defendants' manufacture, sale or distribution of a defective product, Defendants are strictly liable in damages to the Plaintiffs and the Plaintiff Classes.

171. Defendants' acts were willful, wanton, reckless and/or conducted with a reckless indifference to the rights of Plaintiffs and members of the Plaintiff Classes.

**AS AND FOR A FIFTH CAUSE OF ACTION**

**Defective Product, Defective Design**

172. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

173. This cause of action is brought pursuant to Pennsylvania law.

174. Defendants knew or should have known that exposure to PFOA and PFOS was hazardous to the environment and to human health.

175. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF, containing PFCs, was hazardous to human health and the environment.

176. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF containing PFCs would result in the contamination

of the water supply relied upon by Plaintiffs and the putative classes as a result of its proximity to the Bases.

177. Knowing of the dangerous and hazardous properties of the AFFF, Defendants could have manufactured, marketed, and sold alternative designs or formulations of AFFF that did not contain PFCs.

178. These alternative designs and/or formulations were already available, practical, and technologically feasible.

179. The use of these alternative designs would have reduced or prevented the reasonably foreseeable harm to persons and property that was caused by the Defendants' manufacture, marketing, and sale of AFFF that contained PFCs.

180. Additionally, the AFFF that was manufactured, marketed, and sold by the Defendants contained PFCs that were so toxic and dangerous to human health and the environment, the toxic chemicals were so mobile and persistent, that the act of designing, formulating, manufacturing, marketing, and selling this product was unreasonably dangerous under the circumstances.

181. Further, this contamination then led to the exposure of residents of the areas surrounding the Bases to the toxins and increased their risk of numerous diseases as more fully set forth above.

182. The AFFF manufactured, marketed, and sold by the Defendants was a defective design as the foreseeable risk of harm could have been reduced or eliminated by the adoption of a reasonable, alternative design that was not unreasonably dangerous.

183. Defendants' defective design and formulation of AFFF was a direct and proximate cause of the environmental and health impacts from PFOA, PFOS, and potentially other toxic substances, that came from the use and storage of AFFF at the Bases

184. As a result of Defendants' defective design and formulation of AFFF, the resulting contamination, the value and marketability of the property of the Plaintiffs' and Property Damage Class has been and will continue to be diminished. Plaintiffs and the Class Members have suffered the need for and the cost of remediation of their properties and or mitigation systems for those properties, and the cost of alterative water. As a result of the contamination Plaintiffs and the Plaintiff Class have lost use and enjoyment of their properties and have suffered annoyance and discomfort, inconvenience and annoyance as a consequence of the contamination of their properties by Defendants.

185. As a result of Defendants' defective design and formulation of AFFF, the resulting contamination, the Plaintiffs and the Bodily Injury Classes have been injured in that their exposure to PFOS, PFOA, and potentially other toxic substances has caused them to develop illnesses associated with this exposure as more fully described and/or significantly increased their risk of developing those illnesses.

186. As a result of Defendants' design and formulation of a defective product, Defendants are strictly liable in damages to the Plaintiffs and the Plaintiff Classes.

187. Defendants' acts were willful, wanton, reckless and/or conducted with a reckless indifference to the rights of Plaintiffs and members of the Plaintiff Classes.

## AS AND FOR AN SIXTH CAUSE OF ACTION

**Unjust Enrichment**

188. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

189. This cause of action is brought pursuant to Pennsylvania law.

190. Defendants knew or should have known that exposure to PFOA and PFOS was hazardous to the environment and to human health.

191. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF, containing PFCs, was hazardous to human health and the environment.

192. Even after Defendants' were made aware of the dangers to human health and the environment of AFFF that contained PFCs, the continued to manufacture their product.

193. The Defendants' continued to profit from the manufacture and sale of PFC containing AFFF after learning of the unreasonably dangerous nature of their product.

194. Defendants' did not promptly cease selling or recall their PFC containing AFFF after learning of the dangers to human health and the environment from PFCs.

195. As such, the Court should not permit the Defendants' to retain the benefits in the form of profits from the sale of PFC containing AFFF and the expenditures saved by the Defendants' when they did not promptly develop or invest in non-PFC containing AFFF.

196. Further, the acceptance and retention of benefits under the circumstances described of herein without payment of value to Plaintiffs and the putative classes was inequitable.

197. These expenditures saved and profits made should be awarded as a remedy in the present action.

**PUNITIVE DAMAGES**

198. Plaintiffs and the Class hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

199. Upon information and belief, Defendants engaged in willful, wanton, malicious, and or/reckless conduct that caused the foregoing property damage, nuisances, and injuries upon the persons and properties of Plaintiffs and the Class, disregarding their protected rights.

200. Defendants' willful, wanton, malicious, and/or reckless conduct includes but is not limited to Defendants' failure to take all reasonable measures to ensure PFOA-containing waste would be effectively disposed of and not discharged into the surrounding environment.

201. Defendants have caused great harm to the property and water supplies of Plaintiffs and the Class and demonstrated an outrageous conscious disregard for their safety with implied malice, warranting the imposition of punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs and the Class demand judgment against Defendants, and each of them, jointly and severally, and request the following relief from the Court:

A. an award certifying the proposed Bodily Injury and Property Damage Classes, designating Plaintiffs as the named representatives and designating the undersigned as Class Counsel;

B. a declaration that Defendants acted with negligence, gross negligence, and/or willful, wanton, and careless disregard for the health, safety, and property of Plaintiffs and members of the Class.

C. an order requiring that Defendants implement a testing and monitoring protocol to test each property and its drinking water for the properties belonging to the members of the Property Damage Class and, where appropriate, to implement appropriate remedial measures.

D. an order establishing a medical monitoring protocol for Plaintiffs and the Bodily Injury Class.

E. an award to Plaintiffs and the Class of general, compensatory, exemplary, consequential, nominal, and punitive damages;

F. an order for an award of attorney fees and costs, as provided by law;

G. an award of pre-judgment and post-judgment interest as provided by law, and

H. an order for all such other relief the Court deems just and proper.

## JURY DEMAND

Plaintiffs demand a trial by jury of any and all issues in this matter so triable pursuant to Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

**NAPOLI SHKOLNIK PLLC**

By:______________________

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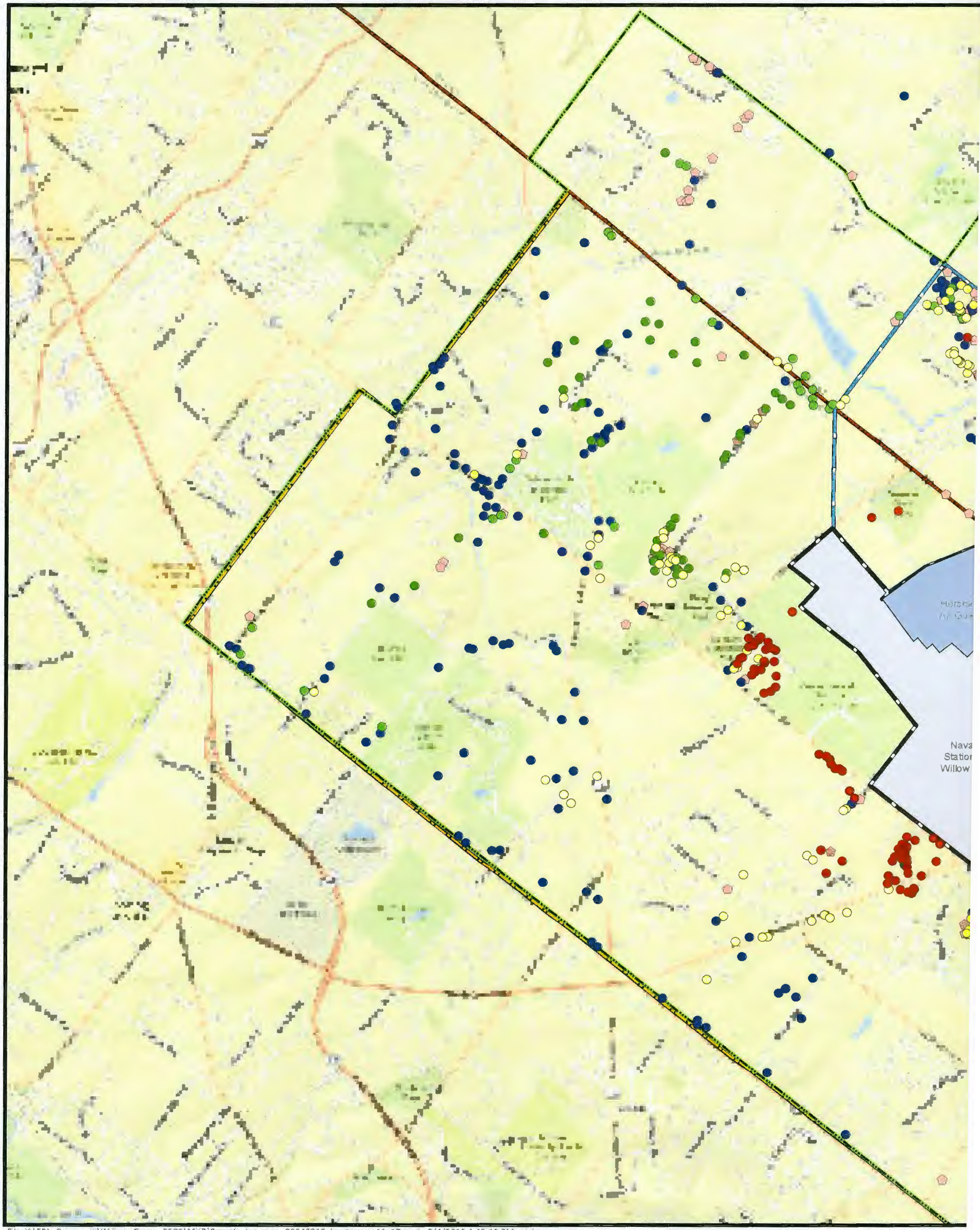
*Attorneys for Plaintiffs and the putative classes*

December 13, 2016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**Legend**

Health Advisory Level (HAL)
HAL is the sum of both PFOA and PFOS
PFOA 0.070 μg/L, PFOS 0.070 μg/L

- Sum of PFOA & PFOS concentrations above 0.070 μg/L
- Sum of PFOA & PFOS concentrations detected at or below 0.070 μg/L
- PFOA & PFOS not detected
- Location sampled (no results yet)
- Not scheduled for sampling yet
- Horsham Air Guard
- Former NAS JRB Willow Grove
- Air Force Admininstrative Order Boundary
- Sampling Area
- Horsham Township
- Warrington Township

Imagery: ESRI, GeoEye, Digital Globe 2013
Sample Data: Weston Generated

*Coordinate System: WGS84 UTM Zone 18N Feet*

N

0 3,500 7,000
Feet

Willow Grove Naval Air Station Site

Figure 1
PFC Sample Location Map
as of 08/04/2016

TDD#: W501-15-07-022/027
Contract: EP-S3-15-02
Prepared: 8/4/2016

WESTON SOLUTIONS